



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
75 Hawthorne Street  
San Francisco, CA 94105

August 2, 2017

**Settlement Communication, Subject to FRE 408**

Nathan Block  
Senior Counsel, Litigation and Disputes  
BP Legal  
BP America, Inc.  
501 Westlake Park Boulevard  
Houston, TX 77079

RE: Anaconda Mine Site: Claim of EPA for Past Costs

Dear Nathan:

This is to respond in writing to ARC's letter of June 13, 2017 which we discussed in person after the meeting in Reno on June 28. As I told you then, EPA does not regard ARC's counteroffer of \$500,000 as a serious attempt to settle EPA's past costs claim. We noted in our letter of June 5, 2017 that EPA has accrued costs of well over \$7 million for OU-8, in addition to \$4 million of costs previously waived. EPA's settlement offer, then, represents a compromise of over half of EPA's unreimbursed past costs at the Site. ARC's counteroffer, by contrast, does not even rise to a "cost of defense" position.

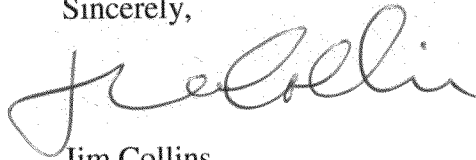
ARC's June 13 counteroffer is largely devoted to argument, in most respects reiteration of arguments in ARC's June 12, 2015 letter declining to pay in full EPA's cost demand at that time. While EPA believes that extensive legal argument respecting liability is unproductive as a settlement tool, it is necessary to note that the statement in the counteroffer that "...EPA is not asserting a claim for the agency costs associated with OU-8" is incorrect. EPA has always reserved its claim for OU-8 costs, as set out, for example, in EPA's June 22, 2015 response to ARC's letter of June 12, 2015. EPA's settlement demand is an offer to compromise those costs, not waive them, in aid of a quick settlement as an element of the deferral process.

EPA does not agree that the liability for the existing and threatened releases at OU-8 is an "orphan share," despite the repeated invocation of this term in the counteroffer. The EPA 1996 orphan share guidance is inapplicable to owner/operator sites, such as Anaconda, and the principle of joint and several liability remains applicable. The majority of the hazardous substance-containing material disposed of at OU-8 is Site-sourced mine waste. Even a successful divisibility argument as to OU-8 liability in a litigated result, should ARC succeed in meeting its burden, would likely result in a minor reallocation at most. EPA also disagrees with the further argument in the counteroffer that, as to costs associated with other Site OUs, "a not-insubstantial portion of these costs is rightfully attributable to the Arimetco orphan share." A divisibility argument as to Site-wide groundwater is far too tenuous to warrant a reduction of EPA's settlement position, especially in light of ARC's potential liability for OU-8.

EPA's settlement demand for \$8.5 million reflects acknowledgment of ARC's partial potential defense to OU-8 liability and also reflects a substantial discount for ARC's voluntary implementation of the OU-8 ROD in lieu of enforcement. In a further attempt to resolve all past cost claims and to expedite the cleanup of the Site, EPA is willing to discount its claim by another \$1 million, and will settle its past cost claim for \$7.5 million, provided all other agreements necessary for deferral of the Site to Nevada state authorities are executed. The other further conditions to settlement set out in the last paragraph of the June 13 counteroffer are agreed, except for the waiver of future EPA costs. EPA is not making a present demand for such costs, but cannot waive them in this settlement.

We look forward to prompt resolution of this matter, and are available to meet and confer at our mutual convenience.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jim Collins", with a stylized, cursive script.

Jim Collins

Assistant Regional Counsel

cc: Angeles Herrera  
Adam Cohen